STATE OF MICHIGAN

COURT OF APPEALS

FARM BUREAU INSURANCE, as subrogee of RON DORSEY, Plaintiff-Appellant, v CITY OF DETROIT, Defendant-Appellee.	UNPUBLISHED August 25, 2005 No. 261291 Wayne Circuit Court LC No. 04-415263-CZ

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm.

According to plaintiff's complaint, a fire that originated at and emanated from a vacant building owned by defendant damaged two properties insured by plaintiff. Plaintiff paid its insured $45,944.50 and filed this action as the insured's subrogee. Plaintiff alleged that defendant was liable for the fire damage as an unconstitutional taking or inverse condemnation of the property.[1] Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). The trial court granted defendant summary disposition on the basis that plaintiff could not establish that defendant took any intentional affirmative act toward the property or that the fire served any public purpose.

This Court reviews an order granting summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiff contends that the trial court erred in concluding that affirmative actions toward the property must be established for governmental liability for an unconstitutional taking or

[1] Plaintiff also alleged that defendant was liable for "trespass nuisance taking." The trial court ruled that no such cause of action exists in Michigan and there was no trespass-nuisance exception to governmental immunity. Plaintiff does not challenge this ruling on appeal.

inverse condemnation in a case involving a physical invasion, as opposed to a regulatory taking. *Hinojosa v Dep't of Natural Resources*, 263 Mich App 537; 688 NW2d 550 (2004), is controlling on this issue. In *Hinojosa*, a fire emanating from an abandoned house owned by the defendant damaged properties owned or insured by the plaintiffs. This Court agreed with the trial court that the plaintiffs failed to state a cause of action for an unconstitutional taking or inverse condemnation "because the complaint alleged no affirmative action by the state directed at the plaintiffs' properties, but, at most, alleged negligent failure to abate a nuisance." *Id*. at 548. In the present case, plaintiff's complaint does not allege that defendant took affirmative action directed toward plaintiff's properties. Pursuant to *Hinojosa*, the complaint failed to state a cause of action for an unconstitutional taking or inverse condemnation.

Plaintiff does not attempt to distinguish *Hinojosa*, but argues that it was wrongly decided. According to plaintiff, the requirement of affirmative actions aimed at the property applies where there is a regulatory taking, not where the taking is by physical invasion. This Court need not examine the details of this argument in the present case. A Court of Appeals opinion published after November 1, 1990, is binding precedent on subsequent panels of the Court of Appeals. MCR 7.215(C)(2), (J)(1); *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 23; 678 NW2d 619 (2004).

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray